

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA (READING)**

In re: Robert Joseph Kroboth and : Chapter 12
Melanie Ann Kroboth :
Debtors : Case 4:16-bk-13342

STIPULATION AND ORDER

This 9 day of October, 2019, debtors Robert Joseph Kroboth, Melanie Ann Kroboth, secured creditor Fulton Bank, N.A., and trustee Michael B. Joseph, Esquire, hereby agree and stipulate as follows:

1. By Order Confirming Plan Under Chapter 12 dated June 8, 2017 (Doc 64), Debtors Third Amended Chapter 12 Plan (Doc 54) and Addendum to Third Amended Chapter 12 (Doc 60) (collectively, the "Plan") was confirmed.
2. Pursuant to the Plan, Debtors were obligated to, *inter alia*, make payments to the Trustee in the amount of \$94,000.00 each, on March 29, 2019 and June 28, 2019 and are obligated to make a \$94,000.00 payment on September 27, 2019 (the "Missed Payments"). (Doc 54, ¶1).
3. To date, Debtors have made no payments towards the Missed Payments and do not expect to do so prior to September 27, 2019.
4. Premised on the first two Missed Payments, on June 17, 2019, secured creditor Fulton Bank, N.A. ("Fulton") filed a Motion to Convert Case to Chapter 7 Pursuant to 11 U.S.C. § 1208 (the "Motion") (Doc 20).
5. Further pursuant to the Plan, Debtors delivered to Fulton the New Fulton Loan Documents (as defined in the Plan) pursuant to which Debtors were to pay the

balance of Fulton's Claim not being addressed by the Plan, outside of the Plan. (Doc 54, ¶2.B.iii).

6. Included in the New Fulton Loan Documents are grants of collateral comprised of all assets of Debtors used to run their farm and necessary to complete the Plan.

7. Neither any injunction nor the Automatic Stay apply to the New Fulton Loan Documents. (Doc 54, ¶4).

8. In addition to the Missed Payments, Debtors have missed multiple payments under the New Fulton Loan Documents and accordingly, Debtors are in default thereof.

9. To resolve the Motion and allow the Debtors to attempt to complete the Plan by way of Fulton forbearing on exercising its rights under the New Fulton Loan Documents, the parties have agreed as follows:

- a. No less than five (5) days after the receipt of any funds payable from any crop insurance program, Debtors shall pay over same, up to \$60,000.00, to Fulton. This payment shall be made directly by Debtors to Fulton and shall be applied to the New Fulton Loan (as defined in the Plan). Any funds payable from any crop insurance program received by Debtors over \$60,000.00 shall be paid to the Trustee within five (5) days of receipt.
- b. No later than December 31, 2019, Debtors shall have made all Plan payments due through December 31, 2019; which will total \$376,000.00.

- c. No later than December 31, 2019, Debtors shall have cured all payment defaults under the New Fulton Loan Documents, which will total \$120,000.00. Debtors and Fulton shall enter into a separate forbearance agreement related to the New Fulton Loan, reasonably acceptable to Fulton, to evidence this term (the “**Forbearance Agreement**”).
- d. Debtors shall provide the Trustee and Fulton with reports on the status of all crop insurance payments and crop sales commencing every thirty (30) days from the date Debtors sign this Stipulation.
- e. If Debtors remain compliant with all terms of this Stipulation, Fulton shall not seek dismissal of the instant Bankruptcy as a result of the Missed Payments.
- f. **Dismissal Upon Noncompliance**. If Debtors have not complied with paragraph 9.b, hereof, Debtors hereby irrevocably agree and consent to the Dismissal of this case, or its conversion to Chapter 7, at Debtors’ discretion, which shall be effective immediately upon the Debtor’s non-compliance with this Stipulation. If Debtors fail to comply with paragraph 9.b, the Trustee (or Fulton with Trustee’s written consent) shall deliver to the Bankruptcy Court, via ECF, a notice of non-payment (“**Non-Payment Notice**”) and serve same on Debtors via ECF. Debtors shall have five (5) days from delivery of the Non-Payment Notice to deliver a notice to the Court of its choice of Dismissal or Conversion to Chapter 7 (the “**Debtor Option Notice**”). Upon receipt thereof, the Bankruptcy Court shall enter an

Order dismissing or converting the case, as the case may be, in the form attached hereto as Exhibit "A" (the "Dismissal/Conversion Order"). If Debtors do not deliver the Debtor Option Notice in a timely, manner, the Order shall be entered converting the case to Chapter 7. If a Non-Payment Notice is delivered to the Court, no further motion shall be required. For the avoidance of doubt, any challenge or opposition to the Dismissal/Conversion Order may not be raised by motion to reconsider or by appeal from the Dismissal/Conversion Order. The Dismissal/Conversion Order will be entered as a ministerial matter pursuant to the terms of this Stipulation.

- g. Nothing in this Stipulation shall be deemed to preclude Fulton from 1) seeking dismissal of this case prior to December 31, 2019 if Debtors are not in compliance with any term herein or 2) exercising its rights under the New Fulton Loan Documents if Debtors fail to make the payment in paragraph 9.a, above, or otherwise default under the Forbearance Agreement.

SO STIPULATED:



Robert Joseph Kroborth



Melanie Ann Kroborth



David B. Schwartz, Esquire,
Counsel for Debtors

Scott M. Klein

Scott M. Klein, Esquire,
Counsel for Fulton Bank, N.A.

Michael B. Joseph
Michael B. Joseph, Esquire
Chapter 12 Trustee 10-719

This Stipulation is APPROVED and entered as an ORDER of Court.

BY THE COURT:

October 10, 2019

Magdalene D. Coleman
Magdalene D. Coleman
Chief United States Bankruptcy Judge

EXHIBIT "A"
DISMISSALCONVERSION ORDER

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ORDER OF DISMISSAL

AND NOW, the ____ day of _____, 20____, upon the notice of non-compliance with the Stipulation and Order entered by this Court on _____, and the notification from Debtors of their selection of remedy, if one has been provided, and it being established that Debtors have failed to comply with the terms of the Stipulation and Order, and the Debtors' consent to dismissal [conversion to Chapter 7] contained in the Stipulation and Order, it is hereby ORDERED and DECREED that this case is DISMISSED [CONVERTED TO CHAPTER 7 IN ACCORDANCE WITH F.R.B.P. 1019].

BY THE COURT:

Magdeline D. Coleman
United States Bankruptcy Judge